



CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221

HEARING EXAMINER

GARY HAAKENSON
MAYOR

RECEIVED

APR 12 2010

PLANNING DEPT.

In the Matter of the Appeal of) NO. APL-2010-0001
)
Michael Hathaway) FINDINGS, CONCLUSIONS,
) AND DECISION
)
Of an Administrative Decision.)
_____)

SUMMARY OF DECISION

The appeal of the January 11, 2010 administrative decision is **DENIED**.

SUMMARY OF RECORD

Request:

Michael Hathaway (Appellant) appealed a January 11, 2010 determination by City Planner Michael Clugston that the conditions of tree cutting permit no. CU-2008-40 have not been satisfied.

Hearing Date:

The City of Edmonds Hearing Examiner conducted an open record hearing on the request on March 18, 2010.

Testimony:

At the open record hearing, the following individuals presented testimony under oath:

1. Michael Clugston, Planner, City of Edmonds
2. Michael Hathaway, Appellant
3. Felipe Mendez, Karr Tuttle Campbell, Attorney for Gregory and Katherine Strand
4. Ron Den Adel, Soundview Construction
5. Richard Kirschner, S&K Joint Ventures
6. Alvin Rutledge
7. Robin Michel

Exhibits:

At the open record hearing the following exhibits were admitted into the record:

1. Staff Report for Appeal¹
2. Zoning and Vicinity Map

¹ At the hearing, the Hearing Examiner assigned Exhibit 20 to this document without realizing that staff had already marked it as Exhibit 1 (see page 13 of Staff Report). Thus, Exhibit 1 and Exhibit 20 are the same document.

3. Appeal of Land Clearing and Tree Cutting Decision filed January 25, 2010, with January 11, 2010 administrative decision, February 10, 2009 decision on CU-2008-40 (with attachments as listed on page 6), and Certificate of Service
4. Letter from Mike Clugston, City of Edmonds to Michael Hathaway dated January 11, 2010 (administrative decision)
5. February 10, 2009 decision on CU-2008-40, with the following attachments:
 1. Land Use Application for Tree Cutting Permit filed June 3, 2008
 2. Applicant Statement dated May 31, 2008
 3. Applicant's Revised Statement received October 10, 2008
 4. McClintick Viewshed Easement, Filing No. 8705120211
 5. McClintick Short Subdivision Map, Filing No. 8611040404
 6. S&K Joint Ventures Short Subdivision Map, No. S-04-58
 7. Arborist's Report dated December 17, 2007
 8. Existing Tree Inventory (Plot Map A)
 9. Proposed Trimming Plan (Plot Map B)
 10. Determination of Nonsignificance issued April 14, 2008
 11. Letter from Associated Earth Science dated May 27, 2008
 12. Letter from Associated Earth Science dated July 30, 2007
 13. Geotechnical Report from Associated Earth Science dated January 3, 2006
 14. Engineering Division Comments dated May 7, 2008
6. Photographic Height Survey by Mr. Den Adel, submitted May 14, 2009
7. View Management and Tree Replacement Program by Washington Tree Experts, dated August 25, 2008 and received September 24, 2009
8. Letter from Mike Clugston to Richard Kirschner re: View Management and Tree Replacement Plan dated October 12, 2009
9. Report and tree assessments from Washington Tree Experts received December 4, 2009
10. Letter from Mike Clugston to Richard Kirschner re: Permit Conditions Not Satisfied for File CUP-2008-0040, dated December 10, 2009
11. Tree Elevation Survey by Crones & Associates, dated May 19, 2009 and received by City January 7, 2010
12. Draft letter to Mr. Clugston re: imminent risk, received January 7, 2010 (attached to Exhibit 28)
13. Email from Mr. Hathaway to Mr. Clugston re: Tree Update dated January 25, 2010
14. City Notice of Intent to Impose Civil Penalties dated February 22, 2010
15. Extension request for CU-2008-40, filed by Mr. Kirschner on February 8, 2010
16. City approval of extension requested dated February 22, 2010
17. Snohomish County Superior Court Complaint No. 10-2-02992-1
18. City of Edmonds Critical Areas Reconnaissance Report dated January 7, 2009
19. Notice of Appeal and Public Hearing, Affidavits of Notice, and Mailing List
20. Staff Report for Appeal (same as Exhibit 1)
21. Settlement Agreement re: Snohomish County Superior Court cause number 07-2-02311-7, dated August 15, 2007
22. June 20, 2008 decision on CU-2008-13, with attachments as listed on page 8 of decision
23. Email correspondence between Mr. Clugston and Mr. Hathaway dated July 9, 2008
24. Email from Mr. Clugston to Mr. Hathaway re: Trees at 17035 76th dated December 3, 2009

25. Email correspondence between Mr. Clugston and Mr. Hathaway re: Strand Tree Permit dated January 12, 2010
26. Letter from Mary Orvis to Hathaways dated December 18, 2009
27. Hand-drawn short subdivision sketches (“rejected” and “approved”) by Richard Kirschner
28. Email from Mr. Hathaway to Mr. Clugston dated January 7, 2010

Upon consideration of the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions:

FINDINGS

1. The Appellant is the owner of Lot 2 of the three-lot Muriel Daniel McClintick short subdivision, which was recorded in 1986. The lot is located at 17016 74th Avenue West in Edmonds (Parcel No. 00513100012206). *Testimony of Mr. Hathaway; Exhibit 5, Attachment 5; Exhibit 22.*
2. The lots within the Muriel Daniel McClintick short subdivision are encumbered by a restrictive covenant on tree height designed to preserve Puget Sound views from Lots 2 and 3 of the subdivision, which include the Appellant’s parcel. *Exhibit 5, Attachment 4.*
3. In 2005, S&K Joint Ventures subdivided Lot 1 of the Muriel Daniel McClintick short subdivision into three lots. Lot 2 of the S&K Joint Ventures short subdivision, now owned by Gregory and Kathleen Strand, is located immediately west and of the Appellant’s parcel, at 17035 76th Avenue West in Edmonds. *Testimony of Mr. Hathaway; Exhibit 5, Attachments 1, 5 and 6.*
4. The Strand parcel contains trees that encroach into the Appellant’s view corridor. Per a 2007 settlement agreement, the former owner of the Strand parcel (S&K Joint Ventures) agreed to “take immediate action” to bring the trees on the parcel into compliance with the covenant. The settlement agreement acknowledged that the City of Edmonds regulates tree removal and trimming, and directed S&K Joint Ventures to seek a tree trimming or tree removal permit from the City. *Exhibit 21; Exhibit 5, Attachment 4.*
5. On June 3, 2008, S&K Joint Ventures, represented by Richard Kirschner and Ron Den Adel, applied to the City for a conditional use permit for “tree cutting” on the Strand parcel. In the project narrative accompanying the application form, the applicants described the project as “tree pruning, cutting and/or tree removal permit in a critical area in order to comply with a local neighborhood height restriction covenant litigation settlement.” *Exhibit 5, Attachments 1 and 2.*
6. The Strand parcel is on a west-facing slope. The eastern portion of the parcel (the location of the subject trees) slopes more than 25 percent and is classified as an Erosion Hazard Area. *Exhibit 18; Exhibit 5, Attachment 13, page 2.* The applicants were aware that the City restricted tree removal on critical slopes, based on their previous experience developing the property. *Testimony of Mr. Den Adel; Testimony of Mr. Kirschner.*

7. The critical areas code (ECDC 23.40) allows trees to be removed from critical areas if they are “hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property”, provided that certain criteria are satisfied. The hazard must be documented in a report from an ISA- or ASCA-certified arborist or landscape architect; the “tree cutting” must be limited to “pruning and crown thinning” unless otherwise justified by a qualified professional; and any trees removed must be replaced at a ratio of two replacement trees to one tree removed “in accordance with an approved restoration plan.” *ECDC 23.40.220(C)(7)(b)*.
8. The land clearing and tree cutting code (ECDC 18.45) prohibits the removal of trees from environmentally sensitive areas unless the “plot plan and other submitted materials can demonstrate that the removal will enhance the easement area.” *ECDC 18.45.050(B)(2)*. “Enhancement may include nonmechanical removal of noxious or intrusive species or dead or diseased plants and replanting of appropriate native species.” *Id.* The land clearing and tree cutting code requires restoration when trees are removed in violation of the code or a tree cutting permit. Up to three replacement trees are required for each tree removed as long as adequate growing space is provided for the species. *ECDC 18.45.075*.
9. A December 17, 2007 arborist report accompanying the tree cutting application described all of the trees on the Strand parcel as being in good condition and health. The arborist identified nine significant trees with sufficient height to encroach into the view corridor (the encroachment was not quantified) and 15 non-significant trees that might encroach into the view corridor. In order to establish views, the arborist recommended that all of identified trees be removed, based on the following rationale:

For all of the trees that are in the landscape, maintaining the views would require repeated topping. This practice would greatly decrease the lifespan of these trees, essentially killing them, requiring removal and replacement in the future. Continuing to top them would only result in killing them. In an effort to establish and maintain healthy trees, any regular and repeated treatment, such as topping, is not recommended.

Exhibit 5, Attachment 7, page 4.

10. The December 17, 2007 arborist report did not address the critical areas requirements of ECDC 23.40 (the arborist submitted that there were no critical areas on the parcel), but did evaluate the feasibility of tree replacement pursuant to ECDC 18.45.075. Due to the relatively small planting area, the arborist recommended tree replacement at a 1:1 ratio, with either nine or more evergreen trees that can withstand repeated topping, or nine or more slow-growing ornamental trees. *Exhibit 5, Attachment 7, pages 2 and 5.*
11. The applicants submitted a tree removal/replacement proposal that differed from, and was more conservative than, the recommendations contained in the December 17, 2007

arborist report.² The applicants proposed to remove three Douglas fir trees and one western red cedar tree, and top three black cottonwood trees and two red alder trees. The applicants proposed to replace the removed trees with a combination of evergreen trees and evergreen shrubs. Four trees and four shrubs would be installed along the east property boundary near the removed trees (the stumps would be left in place), and four trees would be installed along the south property boundary near the removed trees. *Exhibit 5, Attachments 3, 8, and 9.*

12. On February 10, 2009, City Planner Mike Clugston issued a decision conditionally approving “the application for a Conditional Use Permit for tree cutting.” *Exhibit 5, page 5.* The conditions of approval included, in relevant part, the following:

1. The applicant must submit a management plan developed by the arborist that discusses appropriate management (including removal and trimming) of the three existing Douglas firs, the Western red cedar, and the black cottonwood and red alder trees. The plan must take into consideration the requirements of ECDC 18.45 and 23.40. If the management plan is also intended to address viewshed encroachment issues, a cross-sectional view height survey that establishes the height of the viewshed over the former McClintock Parcel 1 and which shows the locations and heights of the trees will be required to assist in that determination. The management plan shall be reviewed and approved by the City prior to any work being done at the site.
2. If the arborist determines that removal of one or more of the trees is the best management option, the tree(s) may be removed as long as the work is performed in accordance with the arborist’s report of December 17, 2007 (Section 6.0) of similar, if subsequently updated in the management plan discussed in Condition 1. If any of the trees are to remain, they shall not be topped but rather trimmed and maintained as described in the management plan.
3. If any trees are to be removed, an updated tree replacement plan, planting schedule, and cost estimate must be created by the project arborist (per ECDC 23.40.220.C.7.b.iv) that considers vegetation appropriate to the steep slope and drainage of the area as well as the view easement. Specific species, sizes and locations for replanting must be indicated. A maintenance plan for the new vegetation must also be developed that describes ongoing upkeep of the plantings. Both documents must be submitted to the City for review and approval prior to any removal.

Exhibit 5, page 5. The decision was not appealed by any party.

13. Mr. Clugston noted in the decision that the all of the trees are in good health and would not be candidates for removal except for the view encroachment issue; that the extent of

² Although not specified anywhere in the submittal, the proposal was similar to recommendations contained in an August 25, 2008 report from Washington Tree Experts (Exhibit 7).

the encroachment had not been established; that the tree cutting code requires trees to be retained to the maximum extent feasible (ECDC 18.45.050(B)); that topping would kill the trees; that the trees are in a critical area; and that the Comprehensive Plan contains policies to minimize the removal of trees from steep slopes. Mr. Clugston's conclusions based on these facts included that the applicant should provide a management plan that meets the requirements of "pertinent City code", addresses the view easement question, and includes a "discussion of appropriate methods of tree trimming which would allow the trees to remain and thrive." *Exhibit 5, pages 2 and 3*. Mr. Clugston did not explicitly conclude that removing any of the trees would violate the critical areas code, despite his findings that the trees are healthy and in a critical area. *Exhibit 5*.

14. On September 24, 2009, Mr. Kirschner submitted an August 25, 2008 letter from a Certified Consulting Arborist regarding "view management and tree replacement program." The arborist submitted that two Douglas fir trees and one western red cedar tree are impeding views and cannot be trimmed below the view line, but that the deciduous trees in the northeast corner of the property could be pruned back below the view line. The arborist provided some recommendations on pruning and on maintenance of proposed replacement plants. *Exhibit 7*.
15. In a letter to Mr. Kirschner dated October 12, 2009, Mr. Clugston responded to the August 25, 2008 letter in relevant part as follows:

The plan provided does not satisfy Condition 1 in two ways:

1. There is no indication about the health of the two Douglas firs and Western red cedar – are they hazardous, diseased or dying according to ECDC 18.45 and 23.40.220.C.7?
2. The deciduous trees at the northeastern corner of the parcel identified in the most recent report do not match those originally identified in the Arbocultural Consulting report from December 17, 2007.

Please submit an updated management plan that addresses the health of the Douglas firs and Western red cedar using a Tree Hazard Evaluation Form and that accurately identifies the trees at the northeast corner of the parcel. Also, a cost estimate for the proposed work is required with the updated management plan.

Exhibit 8.

16. On December 3, 2009, Mr. Clugston forwarded his review of the August 25, 2008 arborist report to the Appellant. In his email, Mr. Clugston explained, "There were a number of conditions noted in the approval of the Strand permit (CU-08-40). Some of these have been complied with but some haven't. The attached letter indicates what information is still needed." *Exhibit 24*.

17. On December 4, 2009, Mr. Kirschner submitted a report from a Certified Arborist from Washington Tree Experts to address the request for additional information. The arborist reported that the trees in question (two Douglas fir, one western red cedar, and a stand of 10 deciduous trees) are of average health and vigor, are not considered to be of high risk or hazard, and do not show signs of disease or decline. *Exhibit 9*. The report included tree assessment forms for the trees proposed for removal. The report did not include a cost estimate for the proposed work. *Exhibit 9*.
18. In a letter to Mr. Kirschner dated December 10, 2009, Mr. Clugston responded to the December 4, 2009 arborist report. Based on the report and the other information that had been submitted, Mr. Clugston concluded that none of the trees could be removed because they did not satisfy the removal criteria of ECDC 23.40.220.C.7.b. *Exhibit 10*.
19. Mr. Clugston sent the Appellant a copy of the December 10, 2009 letter, and spoke to the Appellant about it shortly thereafter. The December 10, 2009 letter did not contain language indicating that it was an appealable administrative decision, and Mr. Clugston did not tell the Appellant that an appeal was possible. The Appellant did not appeal the December 10, 2009 letter. *Testimony of Mr. Hathaway; Exhibit 10*.
20. On January 7, 2010, the Appellant sent Mr. Clugston a tree elevation survey prepared by a professional land surveyor. This report established with precision the extent the trees encroached into the view easement. *Exhibit 11; Exhibit 28*. The Appellant also sent Mr. Clugston a hypothetical letter he drafted in which the Strands express belief that the trees on their parcel pose an imminent threat to their property (the Strands did not author or sign the letter). The Appellant's purpose in sending the letter was to ascertain whether such information, if true, would affect the permit decision. *Exhibits 12 and 28; Testimony of Mr. Mendez*.
21. In a letter to the Appellant dated January 11, 2010, Mr. Clugston responded to the information received January 7. Mr. Clugston reiterated that ECDC 23.40.220.C.7.b prohibits the removal of trees from a critical area unless they are hazardous, pose a threat to public safety, or pose an imminent risk of damage to private property, and that the information the Appellant provided did not demonstrate compliance with the criteria. Mr. Clugston did not find the draft letter to be credible because it conflicted with the conclusions contained in the arborist reports. *Exhibit 4*.
22. In an email to the Appellant dated January 12, 2010, Mr. Clugston indicated that the January 11, 2010 letter could be appealed per ECDC 18.45.060, which allows any person "aggrieved by the decision of the staff regarding a clearing permit" to file an appeal to the Hearing Examiner within ten working days of the date of the decision (in this case, no later than January 25, 2010). *Exhibit 25; ECDC 18.45.060*.
23. On January 24, 2010, the Appellant hired a contractor to cut down four evergreen trees on the Strands' parcel. The Appellant notified Mr. Clugston of his action on January 25, 2010, and filed an appeal of the January 11, 2010 letter that same day. *Exhibit 13; Exhibit 3*.

24. In the appeal, the Appellant did not argue that the trees are hazardous, or that Mr. Clugston had approved any of the reports required by the CUP. Instead, the Appellant argued that the City's enforcement of ECDC 23.40.220.C.7.b has effectively revoked the tree cutting permit contrary to *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002). The Appellant argued that because the appeal period on the tree cutting permit has passed, the City is obligated to allow the tree removal specified in the permit application, even if it violates ECDC 23.40.220. The Appellant argued that the tree cutting permit authorized the removal of healthy trees, because Mr. Clugston acknowledged the health of the trees yet issued a decision of approval anyway. *Exhibit 3; Argument of Mr. Marcy*.
25. The City has authorized the removal of healthy trees from the critical area in the past. In June of 2008 Mr. Clugston issued a tree cutting permit to the Appellant specifically authorizing the removal of 11 trees from his own parcel. The Appellant had topped eight of the trees the year before, which had damaged them, but the remaining three trees were healthy. The trees were upslope of the Strand parcel, in an area also classified as a critical area. In approving the permit, Mr. Clugston noted that ECDC 23.40.220.C.7 allows only hazardous trees to be removed from critical areas, but authorized the removal of the three healthy trees because "the presence of the view easement would require [the healthy trees] be topped or trimmed so low as to effectively destroy them." *Exhibit 22, Planning Division Advisory Report, page 4*. The decision included a condition that "all future land clearing and tree cutting work undertaken by those burdened by the McClintick viewshed easement ... shall be done in accordance with all applicable City codes." *Exhibit 22, Planning Division Advisory Report, page 2*. The City authorized the Appellant to commence work once the 14-day appeal period passed. *Exhibit 23*.
26. The Appellant argued that the submitted arborist reports demonstrate compliance with the conditions of CUP approval, but did not present evidence that all of the requirements of Condition 3 have been satisfied. Based on the Hearing Examiner's review, the materials do not include a cost estimate, do not explain how the replacement trees are "native and indigenous to the site and ... a minimum of six feet in height for evergreen trees" as required by ECDC 23.40.220.C.7.b.iv, and include only a cursory description of plant maintenance (applying mulch and watering once a week as needed). According to the City, the reports required by Condition 3 have not even been submitted. *Exhibit 1, page 11; Exhibit 3; Exhibits 7 and 9; Exhibit 5, Attachments 3 and 7*.
27. The Appellant argued that the tree removal and replacement is consistent with the criteria for alteration of a critical area set forth in ECDC 23.40.160. *Exhibit 3; Argument of Mr. Marcy*. Mr. Clugston did not evaluate these criteria in his decision, and compliance with the criteria was not a condition of approval. *Exhibit 5; Exhibit 1, page 12*.
28. The City's response to the appeal is contained in a staff report dated March 10, 2010 and not all of the arguments will be reiterated here. In his testimony, Mr. Clugston emphasized that the conditions of CUP approval required a management plan to be *approved* prior to tree removal, and that he has not approved a management plan; that the management plan was required because he was not sure at the time of decision what the

appropriate action should be with respect to the trees; and that the tree cutting code makes a distinction between tree removal and tree cutting such that approval of a tree cutting permit does not necessarily mean that trees may be removed. *Testimony of Mr. Clugston; Exhibit 1.*

29. The Strands, through their attorney, argued that the Appellant lacks standing to bring the appeal, that the appeal is moot because the trees have already been removed, and that the appeal should be denied. *Argument of Mr. Mendez.*
30. The Appellant argued that his standing is based on being a party of record, as specified in the ECDC, and that the appeal is not moot because in a letter dated February 22, 2010 the City threatened code enforcement action if the appeal is denied. *Argument of Mr. Marcy; Exhibit 14.*
31. Notice of the appeal hearing was mailed to property owners within 300 feet of the site, posted on site, and published in *Everett Herald* on March 4, 2010. *Exhibit 19.*

CONCLUSIONS

1. The Hearing Examiner has jurisdiction to hear this appeal pursuant to ECDC 18.45.060.
2. The Appellant has standing to bring the appeal based on ECDC 18.45.060 and ECDC 20.07.003. The Appellant was aggrieved by the City's decision because the trees at issue encroached into his view easement. The Appellant was a party of record to CU-2008-40 (see Exhibit 5, page 7) and was the recipient of the letter being appealed. *Findings 2, 4, 21, and 30.*
3. The Appellant has the burden of proof on appeal. *ECDC 20.06.006.*
4. Read narrowly, the decision that was appealed only discusses whether the trees on the Strand parcel are hazardous and whether the critical areas code authorizes their removal (as described below, the answer to both of these questions is "no"). However, the Hearing Examiner will also consider the broader question of whether authorization to remove the trees should have been granted based on the conditions of CU-2008-40. *Findings 12 and 21.* The criteria of ECDC 23.40.160 are not relevant to this issue and will not be considered. *Finding 27.*
5. The Appellant has not met his burden of proving that the City's decision was in error, for the following reasons:
 - A. The permit applicants have not obtained City approval of a management plan, an updated tree replacement plan, or a maintenance plan for replacement vegetation. These approvals are required by CU-2008-40. *Findings 12, 18, 21, 24, and 26.*

B. The Appellant presented no evidence that the trees are hazardous. The critical areas code does not permit healthy trees to be removed from a critical area. The City could not have, consistent with the critical areas code, approved the management plan submitted by the applicants. *Findings 7, 17, 20, and 24.*

C. CU-2008-40 does not authorize the removal of trees in violation of the critical areas code. As evidenced by the language of ECDC 23.40.220.C.7.b (“tree cutting shall be limited to pruning and crown thinning”), and the definition of tree removal set forth in ECDC 18.45.040(O), tree cutting and tree removal are different acts, and permission to cut trees does not necessarily mean permission to remove trees.

Although there is ambiguity in the decision, it is clear that the City’s intent was to ensure compliance with the ECDC, the relevant provisions of which were referenced in the conditions of approval. Thus, language in Condition 1 that “the plan must take into consideration the requirements of ECDC 18.45 and 23.40” can fairly be interpreted as meaning that the plan must comply with the requirements. *Findings 12 and 13.*

D. The Appellant has not provided all of the information required by Condition 3 of CU-2008-40. *Finding 26.*

6. The Supreme Court decision *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002) does not require a different result. In that case the Court held that Chelan County could not revoke an erroneously approved boundary line adjustment after the 21-day appeal period had passed.

The City’s failure to approve the reports required by the tree cutting permit decision did not constitute revocation of the permit. The problem for the Appellant is not that the City revoked the permit after the appeal period passed, but that the City did not approve very much to begin with. The ability to remove any trees hinged on the City’s approval of future reports, which, based on the evidence available to the City at the time of the decision and the restrictions of the critical areas code, would have been difficult if not impossible to approve. Clearly, if the City did not have adequate information from which to approve the removal of the trees specifically identified in the applicant’s materials, it should have denied the request or delayed decision until additional reports could be prepared. However, the City instead issued a decision of approval and the time for challenging the conditions has passed. *Findings 12 and 13.*

Because the City’s overall intent was to ensure compliance with the ECDC and the Comprehensive Plan, the relevant ECDC chapters were referenced in the conditions, and the ECDC chapters are not ambiguous with respect to tree preservation requirements, the Hearing Examiner concludes that, unlike *Nykreim*,

the City did not authorize the removal of trees, and that its action in failing to approve the applicant's and/or Appellant's reports does not constitute revocation of the permit. *Findings 6, 7, 8, 12, and 13.*


DECISION

Based on the preceding Findings and Conclusions, the appeal of the January 11, 2010 administrative decision is **DENIED**.

DECIDED April 9, 2010.

Toweill Rice Taylor LLC
City of Edmonds Hearing Examiners

By:



LeAnna C. Toweill

RECONSIDERATION AND APPEAL

The following is a summary of the deadlines and procedures for filing requests for reconsideration and appeals. The procedures are based on Ordinance No. 3736 (June 2009) unless otherwise noted. Any person wishing to file or respond to a request for reconsideration or an appeal should consult the relevant ordinances and/or contact the Planning Division of the Development Services Department for further procedural information.

REQUEST FOR RECONSIDERATION

Section 20.06.010 of the Edmonds Community Development Code (ECDC) contains the procedures for requesting reconsideration of a Hearing Examiner decision. Requests for reconsideration must be filed with the City Planning Director within 10 calendar days of the Hearing Examiner's decision. The filing deadline is 4:30 p.m. on the last business day of the reconsideration period. Only parties of record (i.e., the applicant, any person who testified at the open record hearing on the application, any person who individually submitted written comments on the application, or the City of Edmonds) may file a request for reconsideration. The grounds for reconsideration are limited to errors of procedure, errors of law or fact, errors of judgment, or the discovery of new evidence that was not known and could not in the exercise of reasonable diligence have been discovered. Reconsideration requests must contain the information specified in ECDC 20.06.010(D) and be accompanied by the required filing fee.

APPEALS

Pursuant to ECDC 20.01.003(C), appeals of a decision of the Hearing Examiner on an appeal of a Type II administrative decision are to Snohomish County Superior Court in accordance with the Land Use Petition Act (RCW 36.70C). Appeals must be filed within 21 days of decision issuance. Filing a request for reconsideration is not a prerequisite to filing an appeal.

EFFECT OF REQUEST FOR RECONSIDERATION ON APPEAL DEADLINE

The timely filing of a request for reconsideration stays the Hearing Examiner's decision until such time that the Hearing Examiner issues a decision on reconsideration, and any judicial appeal must be filed within 21 days of the decision on reconsideration.

NOTICE TO COUNTY ASSESSOR

The property owner may, as a result of the decision rendered by the Hearing Examiner, request a change in the valuation of the property by the Snohomish County Assessors Office.



CITY OF EDMONDS

121 5TH AVENUE NORTH • Edmonds, WA 98020 • (425) 771-0220 • FAX (425) 771-0221
HEARING EXAMINER

GARY HAAKENSON
MAYOR

In the Matter of the Appeal of

Michael Hathaway

Of an Administrative Decision.

) NO. APL-2010-0001

) **DECLARATION OF SERVICE**

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DECLARATION

I, LeAnna C. Toweill, the undersigned, do hereby declare:

1. That I am a partner in the firm of Toweill Rice Taylor LLC, which maintains a professional services agreement with the City of Edmonds, Washington for the provision of Hearing Examiner services, and make this declaration in that capacity;
2. That I am now and at all times herein mentioned have been a citizen of the United States, a resident of the State of Idaho, over the age of eighteen (18), and competent to be a witness and make service herein;
3. That on April 9, 2010, I did serve a copy of the decision in case APL-2010-0001 upon the following individuals via U.S. first class mail:¹

1. Michael Hathaway
1526 49th Street NE
Tacoma, WA 98422
2. City of Edmonds Development Services Dept.
Attn: Diane Cunningham
121 - 5th Avenue North
Edmonds, WA 98020
3. Edmonds City Council
121 - 5th Avenue North – 1st Floor
Edmonds, WA 98020
4. Alvin Rutledge
7101 Lake Ballinger Way
Edmonds, WA 98026
5. Ron Den Adel
1023 C Avenue South

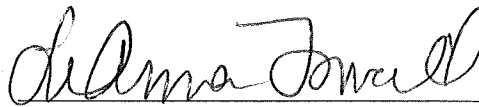
¹ One individual – Robin Michel – wrote his name on the witness sign-in sheet and commented at the appeal hearing, but did not leave a mailing address. The Hearing Examiner did not mail Mr. Michel a copy of the decision in this matter.

Edmonds, WA 98020

6. Felipe Mendez
Karr Tuttle Campbell
1201 Third Avenue, Suite 2900
Seattle, WA 98101
7. Donald Marcy
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104
8. Richard Kirschner
S&K Joint Venture
7503 Braemar Drive
Edmonds, WA 98026
9. Matt Gibbels
17039 76th Avenue West
Edmonds, WA 98026
10. Gregory and Kathleen Strand
17035 76th Avenue West
Edmonds, WA 98026

I hereby declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct:

DATED THIS 9th day of April, 2010 at Boise, Idaho.



LeAnna C. Toweill
Toweill Rice Taylor LLC
Serving as Hearing Examiner for Edmonds, Washington